

## Section 5

### State Monitoring of Facilities

#### 5.1 Adequate System of Monitoring for Compliance

States participating in the JJDP Act must provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and nonsecure facilities to ensure that the core protections are met. The state must also provide annual reporting of the results of such monitoring to the Administrator of OJJDP. Although OJJDP holds the state agency implementing the Formula Grants program responsible for the monitoring effort and the validity of the monitoring report, the state agency may contract with a public or private agency to perform the monitoring function. If selecting another agency, the state must identify in its monitoring plan who the agency has authorized and/or contracted with to assist in the monitoring functions.

As part of an adequate system of monitoring facilities, the state must describe its plan, procedure, and timetable for monitoring. The plan must describe in detail each of the following tasks, including the identification of the specific agency responsible for each task:

- ◆ *Identification of the monitoring universe.* This refers to the identification of all facilities in the state which might hold juveniles pursuant to public authority. Every facility which has this potential, regardless of the purpose for housing juveniles, comes under the purview of the monitoring requirements. This also includes those facilities owned or operated by public and private agencies.
- ◆ *Classification of the monitoring universe.* This is the classification of all facilities in the state to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility.
- ◆ *Inspection of facilities.* Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. All facilities classified as secure detention or correctional facilities, jails, lockups, and other facilities must have periodic, onsite inspections to determine compliance with the core protections. The inspection must include:
  - ▶ A review of the physical accommodations to determine whether it is a secure or nonsecure facility or whether adequate sight and sound separation between juvenile and adult offenders exists and.
  - ▶ A review of the record keeping system to determine whether sufficient data are maintained to determine compliance with DSO, jail removal, and separation.

- ◆ *Data collection and data verification.* Data collection and reporting are required to determine whether facilities in the state are in compliance with the applicable requirements of DSO, jail removal, and separation. The length of the reporting period should be 12 months, but in no case less than 6 months. If reporting 6 months of data, the data must be projected for a full year in a statistically valid manner. If the data is self-reported by the facility or is collected and reported by an agency other than the state agency receiving federal grant funds, the plan must describe a statistically valid procedure used to verify the reported data.

As part of its monitoring system, the state must provide a description of the barriers it faces in implementing and maintaining a monitoring system to report the level of compliance with DSO, jail removal, and separation requirements and its plans to overcome such barriers.

## **5.2 Native American Tribes**

### **Monitoring Facilities on Native American Reservations**

The sovereign authority of Native American tribes with regard to civil and criminal jurisdiction over acts committed on a reservation varies from state to state and, in some states, from tribe to tribe within a state. Where a Native American tribe exercises jurisdiction over juvenile offenders through an established tribal court and operates correctional institutions for juvenile and adult offenders and these activities are not subject to state law (i.e., the functions are performed under the sovereign authority of the tribal entity), the state cannot mandate tribal compliance with the core protections. Therefore, where the state has no authority to regulate or control the law enforcement activities of a sovereign Native American tribal reservation, facilities that are located on such reservations are not required to be included in the monitoring universe.

### **Grants to Native American Tribes**

During the 1988 reauthorization, the JJDP Act was amended to require that a portion of each state's Formula Grant award be made available to fund programs of tribes that perform law enforcement functions. While the Act specifies a minimum level of funding, states may provide any amount in excess of the minimum amount required to accomplish the objectives of the JJDP Act within the tribe. Native American tribes that receive Formula Grant funds as part of the Native American Pass-Through requirement of the JJDP Act must comply with the core protections, and facilities on the reservation must be monitored by the state. In addition, if the tribe wishes to establish eligibility for Community Prevention Grant funds, the tribe must be in compliance with the core protections and facilities on the reservation must be monitored.

## **5.3 Out-of-State Juveniles**

Where there is interstate placement of juveniles and a juvenile is held in a secure facility in violation of the JJDP Act, the receiving state must include the violation in its annual monitoring report. Although only the receiving state must report the violation, it should be noted that neither

state is meeting the intent of the core protections. In addition, a unit of local government cannot establish eligibility for Title V Community Prevention Grant funds if the jurisdiction is in compliance because of sending juveniles to another jurisdiction in violation of the JJDP Act. Juveniles may be held in accordance with the Interstate Compact on Juveniles as enacted by the state.

## **5.4 Enforcement Mechanism**

A state's monitoring system must describe procedures established for receiving, investigating, and reporting complaints of violations of DSO, jail removal, and separation requirements. This should include both legislative and administrative procedures and sanctions.